

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 17A.7, 476.2 and 476.95, the Utilities Board (Board) gives notice that on June 7, 2010, the Board issued an order in Docket No. RMU-2009-0009, In re: High-Volume Access Services [199 IAC 22], “Order Adopting Rules,” by which the Board adopted amendments to 199 IAC 22. The adopted rules address high-volume access service (HVAS) and the effect HVAS can have on a local exchange carrier’s (LEC’s) revenues from intrastate switched access services.¹ In particular, these amendments are focused on situations in which an LEC’s rates for intrastate access services are based, indirectly, on relatively low traffic volumes, but the LEC then experiences a relatively large and rapid increase in those volumes, resulting in a substantial increase in revenues without a matching increase in the total cost of providing access service.

¹Intrastate access services are services of telephone utilities that provide the capability to deliver intrastate telecommunications services which originate with end users to interexchange carriers (IXCs) and the capability to deliver intrastate telecommunications services from IXCs to end users. 199 IAC 22.1(3).

Notice of Intended Action was published in the Iowa Administrative Bulletin at IAB Vol. XXXII, No. 8 (10/07/2009) p. 1022, as **ARC 8227B**. Written comments were filed on or before October 27, 2009, by the following participants: Iowa Telecommunications Association (ITA); Rural Iowa Independent Telephone Association (RIITA); Iowa Association of Municipal Utilities (IAMU); Reasnor Telephone Company (Reasnor); Aventure Communication Technology, LLC (Aventure); Greenway Communications, LLC (Greenway); Qwest Communications Corporation (QCC); AT&T Communications of the Midwest, Inc. (AT&T); MCI metro Access Transmission Services, LLC, d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc., d/b/a Verizon Business Services (collectively “Verizon”); Iowa Coalition of Access Payers² (ICAP); and the Consumer Advocate Division of the Department of Justice (Consumer Advocate).

²The Iowa Coalition of Access Payers consists of Sprint Communications Corporation, LP; U.S. Cellular Corporation; T-Mobile Central, LLC; and Level 3 Communications, LLC.

A public hearing to receive oral comments on the proposed amendments was held on December 8, 2009. On January 11, 2010, the Board issued an order allowing for additional comments on the proposed amendments and proposals presented at the oral comment hearing. Additional written comments were filed by Consumer Advocate, ITA, RIITA, QCC, AT&T, Verizon, ICAP, and two additional participants, XO Communications Services, Inc. (XO Communications), and McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services (PAETEC).

A copy of the Board’s order adopting rules and a summary of the oral and written comments, along with staff recommendations, are available through the Board’s electronic filing system, which can be accessed at <http://efs.iowa.gov>. Based on the comments submitted, the Board determined that the proposed amendments to 199 IAC 22 should be adopted with some modifications, as described in the order adopting rules.

The Board does not find it necessary to propose a separate waiver provision in the rule making. The Board’s general waiver provision in 199 IAC 1.3 is applicable to these amendments.

These amendments shall become effective on August 4, 2010.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, 476.4, 476.5, 476.11, and 476.95.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definition of “High-volume access service (HVAS)” in subrule **22.1(3)**:

“*High-volume access service (HVAS)*” is any service that results in an increase in total billings for intrastate exchange access for a local exchange utility in excess of 100 percent in less than six months. By way of illustration and not limitation, HVAS typically results in significant increases in interexchange call volumes and can include chat lines, conference bridges, call center operations, help desk provisioning,

or similar operations. These services may be advertised to consumers as being free or for the cost of a long-distance call. The call service operators often provide marketing activities for HVAS in exchange for direct payments, revenue sharing, concessions, or commissions from local service providers.

ITEM 2. Adopt the following **new** subparagraph **22.14(2)“d”(8)**:

(8) A provision prohibiting the application of association access service rates to HVAS traffic.

ITEM 3. Adopt the following **new** paragraph **22.14(2)“e”**:

e. A local exchange utility that is adding a new HVAS customer or otherwise reasonably anticipates an HVAS situation shall provide notice of the situation, the telephone numbers that will be assigned to the HVAS customer (if applicable), and the expected date service to the HVAS customer will be initiated, if applicable. Notice may be sent to each interexchange utility that paid for intrastate access services from the local exchange carrier in the preceding 12 months; to any carrier with whom the local exchange carrier exchanged traffic in the preceding 12 months; and to all other local exchange carriers authorized to provide service in the subject exchange, by a method calculated to provide adequate notice. Any interexchange utility may request negotiations concerning the access rates applicable to calls to or from the HVAS customer.

Any interexchange utility that believes a situation has occurred or is occurring that does not specifically meet the HVAS threshold requirements defined in subrule 22.1(3), but which raises the same general concerns and issues as an HVAS situation, may file a complaint with the board pursuant to these rules.

A local exchange utility that experiences an increase in intrastate access billings that qualifies as an HVAS situation, but did not add a new HVAS customer or otherwise anticipate the situation, shall notify interexchange utilities of the HVAS situation at the earliest reasonable opportunity, as described in the preceding paragraph. Any interexchange utility may request negotiations concerning whether the local exchange utility's access rates, as a whole or for HVAS only, should be changed to reflect the increased access traffic.

When a utility requests negotiations concerning intrastate access services, the parties shall negotiate in good faith to achieve reasonable terms and procedures for the exchange of traffic. No access charges shall apply to the HVAS traffic until an access tariff for HVAS is accepted for filing by the board and has become effective. At any time that any party believes negotiations will not be successful, any party may file a written complaint with the board pursuant to Iowa Code section 476.11. In any such proceeding, the board will consider setting the rate for access services for HVAS traffic based upon the incremental cost of providing HVAS, although any other relevant evidence may also be considered. The incremental cost will not include marketing or other payments made to HVAS customers. The resulting rates for access services may include a range of rates based upon the volume of access traffic or other relevant factors. Any negotiations pursuant to this paragraph shall conclude within 60 days. After 60 days, a party to the negotiations may petition the board to extend the period of negotiations or may petition the board to set a hearing pursuant to 199—paragraph 7.4(10)“d.”

ITEM 4. Amend subrule 22.20(5), introductory paragraph, as follows:

22.20(5) Certificate revocation. Any five subscribers or potential subscribers, an interexchange utility, or consumer advocate upon filing a sworn statement showing a generalized pattern of inadequate telephone service or facilities may petition the board to begin formal certificate revocation proceedings against a local exchange utility. For the purposes of this rule, inadequate telephone service or facilities may include the failure to bill high-volume intrastate access (HVAS) charges in a manner consistent with the requirements of rule 199—22.14(476). While similar in nature to a complaint filed under rule 199—6.2(476), a petition under this rule shall be addressed by the board under the following procedure and not the procedure found in 199—Chapter 6.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.